

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Application of)	
)	
BIG TEX COMMUNICATIONS, LTD.)	
)	File No. 10129-CL-P-173-B2-93
For Authority to Establish a New Station)	
in the Cellular Radiotelephone Service in)	
Market 173-B, Biloxi-Gulfport, Mississippi)	
MSA as a Phase I Unserved Area)	
Applicant)	

ORDER

Adopted: February 3, 2000

Released: February 4, 2000

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. In this Order, we dismiss as defective the Phase I unserved area application of Big Tex Communications, Ltd. (Big Tex) for authority to establish a new station in the Cellular Radiotelephone Service in Market 173-B, Biloxi-Gulfport, Mississippi Metropolitan Service Area (Biloxi-Gulfport MSA).

2. Cellular Holding, Inc. (CHI) is the licensee of Station KNKN 757 in the Cellular Radiotelephone Service on Channel Block B in Market 503B-Mississippi 11-Lamar, Mississippi Rural Service Area (Mississippi RSA 11). On January 12, 1993, CHI filed a System Information Update (SIU) that shows that its Picayune and Hillsdale cell sites extend into the Biloxi-Gulfport MSA and accordingly became part of CHI's Cellular Geographic Service Area (CGSA).¹ Three months later, on April 5, 1993, Big Tex filed a Phase I unserved area initial application for authority to construct a new station in the Biloxi-Gulfport MSA. The Commission named Big Tex as the tentative selectee on January 31, 1995² and granted Big Tex's application on May 23, 1995.³ CHI filed a petition to set aside the grant on May 26, 1995.⁴ On June 2,

¹ 47 C.F.R. § 22.903(c)(2) (1994). *See* 47 C.F.R. § 22.925 (1994) (requiring each cellular licensee to file an SIU sixty days before the end of its five year build-out period showing the extent of its CGSA, including any extensions into adjacent markets).

² Public Notice No. CL-95-42 (released January 31, 1995).

³ Public Notice No. CL-95-97 (released May 23, 1995).

⁴ Petition to Set Aside Grant of Application or, Alternatively, Petition for Reconsideration, filed by CHI on May 26, 1995 (Petition).

1995, Big Tex requested that we return its application to pending status.⁵ On June 9, 1995, we set aside the grant pursuant to section 1.113 of the Commission's rules⁶ and returned Big Tex's application to pending status to permit a more comprehensive review of the application.⁷

3. CHI alleges in its Petition that Big Tex's application proposes to establish a cellular station operating on the same channel block as CHI in the Biloxi-Gulfport MSA that would cause harmful interference within CHI's Cellular Geographic Service Area (CGSA).⁸ Accordingly, CHI asks the Commission to dismiss the application as defective.⁹

4. We have analyzed the engineering data submitted by the parties and agree with CHI that Big Tex's application does not comply with former section 22.903(d)(3) of the Commission's rules and must, therefore, be dismissed.¹⁰ Former section 22.903(d)(3) prohibited any initial Phase I application from proposing any extension into the CGSA of an existing licensee. The affidavit of CHI's consulting engineer, and our own independent analysis, demonstrates prohibited extensions by Big Tex into CHI's service area. Big Tex does not dispute the existence of the extensions. Moreover, CHI's Hillsdale and Picayune cells produced Service Area Boundary extensions into the Biloxi-Gulfport, Mississippi MSA that became part of its CGSA, as reflected in CHI's publicly-available FCC Forms 489 notifying the Commission that construction for the Hillsdale and Picayune sites was complete on May 23, 1991 and June 16, 1992, respectively.¹¹ Big Tex's failure to consider these cells as a part of CHI's CGSA resulted in Big Tex's proposing extensions into CHI's service area, which rendered its unserved area application defective. We therefore dismiss Big Tex's above-captioned unserved area application.

5. Accordingly, IT IS ORDERED that pursuant to sections 4(i) and 308 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 308, and sections 0.331 and 22.28 of the Commission's Rules, 47 C.F.R. §§ 0.331, 22.28 (1994), the Phase I unserved area application filed on April 5, 1993 by Big Tex

⁵ Request for Temporary Suspension of Procedural Dates, or in the Alternative, to Return Application to Pending Status, filed by Big Tex on June 2, 1995.

⁶ 47 C.F.R. § 1.113(a) permits the Commercial Wireless Division to set aside an action within 30 days after public notice has been given of such action.

⁷ Letter from Stephen L. Markendorff, Chief, Broadband Branch, Commercial Wireless Division, to Joseph Nocente, President, Big Tex Communications, Ltd. (June 9, 1995).

⁸ Petition at 1-2.

⁹ *Id.* at 6-7.

¹⁰ 47 C.F.R. § 22.903(d)(3) (1994). *See Planters Rural Telephone Cooperative, Inc.*, 2 FCC Rcd. 2502 (1987) (Commission will not grant applications that may cause harmful interference to other licensed cellular operators). Pursuant to section 22.959 of the Commission's rules, 47 C.F.R. § 22.959, in processing Big Tex's application, we will apply the rules in effect prior to the adoption of the rules in the Part 22 Rewrite Order, Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Report and Order*, 9 FCC Rcd. 6513 (1994).

¹¹ *See* 47 C.F.R. § 22.43(c)(2)(i) (1994) (requiring the filing of FCC Form 489 notifications upon completion of construction of the cells).

Communications, Ltd. IS DISMISSED.

6. IT IS FURTHER ORDERED that pursuant to sections 4(i) and 308 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 308, and section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331, that the Petition to Set Aside Grant of Application or Alternatively, Petition for Reconsideration filed by Cellular Holding, Inc. on May 26, 1995 and the Request for Temporary Suspension of Procedural Dates, or in the Alternative, to Request to Return Application to Pending Status filed by Big Tex Communications, Ltd. On June 2, 1995 ARE DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari
Chief, Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau